Application Serial No. 09/718,749

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	LaCombe, Jr. et al.
Title:	METHOD FOR SECURITIZING RETAIL LEASE ASSETS
Appl. No.:	09/718,749
Filing Date:	11/22/2000
Examiner:	Felten, Daniel S.
Art Unit:	3624
Atty. Dkt. No.:	073487-0142

CERTIFICATE OF EXPRESS MAILING
I hereby certify that this correspondence is being deposited with the United States Postal Service's "Express Mail Post Office To Addressee" service under 37 C.F.R. § 1.10 on the date indicated below and is addressed to: **Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.**

EV 459163866 US (Express Mail Label Number) 02/07/05 (Date of Deposit)

Roberta A. Cooper
(Printed Name)

Roberta A. Cooper
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Commissioner for Patents
PO Box 1450
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DECLARATION UNDER 37 C.F.R. § 1.131

We, Lawrence B. LaCombe, Jr., Robert L. Schwartz, Frederick L. Feldkamp, Elizabeth A. Raymond, Robert N. Deitz, William A. Levy, Richard V. Kent, Sr., Robert L. Straub, Nancy L. Bugg, Christine A. Ondrick, Cynthia A. Ranzilla, and Gregory A. Kruszewski, state and declare that:

1. We are co-inventors of Claims 1-119 of the patent application identified above.

2. This declaration, as evidenced by the attached Exhibits A and B, establishes conception and reduction to practice of the subject matter of Claims 1-119 in U.S. Patent Application No. 09/718,749 ("Application") prior to February 14, 2000, the effective date of U.S. Patent No. 6,622,129 entitled "Method of Creating an Index of Residual Values for Leased Assets, Transferring Residual Value Risk, and Creating Lease Securitizations" to Whitworth ("Whitworth '129").

3. Exhibit A is a memorandum from Frederick L. Feldkamp regarding the subject matter of claims 1-119. While the actual date of Exhibit A has been redacted, this date is prior to February 14, 2000. Other dates referenced throughout Exhibit A have also been redacted, but each of these dates are prior to February 14, 2000 as well. Exhibit A establishes the conception

and reduction to practice of the subject matter of claims 1-119. Exhibit A provides a description of the features and elements claimed in the Application.

4. Exhibit B is a chart prepared by Frederick L. Feldkamp which establishes the conception and reduction to practice of the subject matter of claims 1-119. The date of Exhibit B, which was prior to February 14, 2000, has again been redacted. The chart provides a description of the flows accommodated through computer processing to create cash available to support securities. In the chart under "Outflows," the figures "NP_1, NP_2" represent "Note Purchasers," which would be the entities that would then issue securities. Exhibit B resembles the subject matter of Figure 2 of the Application.

5. Thus, Exhibits A and B establish conception and reduction to practice of the subject matter claimed in the Application prior to February 14, 2000.

1/18/05	LB LaCombe Jr
(Date)	(Signature)
	Lawrence B. LaCombe, Jr.
(Date)	(Signature)
	Robert L. Schwartz
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	Frederick L. Feldkamp
(Date)	(Signature)
	Elizabeth A. Raymond
(Date)	(Signature)
	Robert N. Deitz

and reduction to practice of the subject matter of claims 1-119. Exhibit A provides a description of the features and elements claimed in the Application.

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(Date)	(Signature) Lawrence B. LaCombe, Jr.
(Date)	(Signature) Robert L. Schwartz
(Date)	(Signature) Frederick L. Feldkamp
(Date)	(Signature) Elizabeth A. Raymond
(Date)	(Signature) Robert N. Deitz

and reduction to practice of the subject matter of claims 1-119. Exhibit A provides a description of the features and elements claimed in the Application.

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	Lawrence B. LaCombe, Jr.
(Date)	(Signature)
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1/10/05 (Date)	(Signature)
	Frederick L. Feldkamp
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	Elizabeth A. Raymond
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	Robert N. Deitz

and reduction to practice of the subject matter of claims 1-119. Exhibit A provides a description of the features and elements claimed in the Application.

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	Lawrence B. LaCombe, Jr.
(Date)	(Signature)
	Robert L. Schwartz
(Date)	(Signature)
	Frederick L. Feldkamp
(Date)	Elizabeth Raymond (Signature)
	Elizabeth A. Raymond
(Date)	(Signature)
	Robert N. Deitz

and reduction to practice of the subject matter of claims 1-119. Exhibit A provides a description of the features and elements claimed in the Application.

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	Lawrence B. LaCombe, Jr.
(Date)	(Signature)
	Robert L. Schwartz
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	Frederick L. Feldkamp
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January 17, 2005
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(Date) (Signature)

Gregory A. Kruszewski

PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT

EXHIBIT
A

MEMORANDUM TO

Robert L. Schwartz
Attorney
General Motors Legal Staff

and

Lawrence B. LaCombe, Jr.
Director - Securitization and Banking
General Motors Acceptance Corporation

From

Frederick L. Feldkamp
Foley & Lardner

Re: Central Originating Lease Trust—
Review and Analysis of Structure
as Documented

REDACTED

REDACTED

On Central Originating Lease Trust, a Delaware business trust ("COLT"), was formed with an initial capital infusion of just over $4 million. In a private placement which closed on that date, investors in COLT committed to purchase total equity of up to $202 million, in the form of subordinate certificates, rated AA by Standard & Poor's and Aa2 by Moody's. The primary investors in COLT (holding approximately 99% of its equity) consist of a consortium led by major financial institutions owned or financed by affiliates of CS First Boston, BankAmerica Corporation, Barclays Bank Plc, First Chicago NBD Corporation and Union Bank of Switzerland.

Each participant in the COLT transaction has executed a confidentiality and non-disclosure agreement that restricts the participant (and its affiliates) from disclosing any aspect of the structure, or otherwise using any information relating to COLT, for any other purpose. A few facts related to the transaction became public as a result of a press release issued by Moody's on Following that release, various financial industry publications have sought information relating to COLT. Most of the important aspects of the structure, however, remain confidential.

This memorandum sets forth the background, structure, goals and expected consequences of the COLT structure. The information in this memorandum is proprietary to General Motors Acceptance Corporation ("GMAC") and is reflected in this memorandum as a means to communicate the results of several years of efforts by GMAC and its counsel to create a viable and flexible structure which would permit GMAC and its parent, General Motors Corporation ("GM"), to obtain the tax benefits and market advantages available by leasing vehicles as a means to facilitate sales, without incurring the financial risks associated with holding large volumes of illiquid lease assets at GMAC.

BACKGROUND - The purpose and market advantages of COLT.

During the financial crisis of GMAC's lease portfolio represented a relatively small portion of its assets. When GMAC's market access became threatened by financial circumstances reflected in a series of downgrades by rating agencies, GMAC undertook a number of actions, including the sale of large portfolios of retail and wholesale receivables, in order to assure its continuing market access and to reduce reliance on traditional debt markets. As a result of these actions and the extraordinary turnaround of GM, necessary funding was obtained and GMAC successfully emerged from that crisis.

During the period between GMAC created (i) several new forms of financial instruments for securitization of retail receivables, (ii) an innovative procedure for securitizing dealer inventory loans that nearly doubled the liquidity available from this asset class and (iii) an asset-backed commercial paper vehicle that helps to assure optimal pricing for future securitizations of retail and wholesale assets. GMAC also created standby market access to facilitate receivables liquefication and relieve the need for GMAC's own CP issuance in the event of future market access threats.

REDACTED

As noted, leases represented a relatively small portion of GMAC's assets in . At the time, efforts to securitize vehicle operating leases had proven problematic using existing technology. As a combined consequence of size and difficulty, GMAC's lease portfolio was placed in a lower priority for securitization. Each of the factors which led GMAC to avoid securitization of leases in has now effectively reversed. Securitization of lease assets has become <u>much</u> more important for GMAC.

Since GMAC's operating lease assets have grown from around $4 billion to over $22 billion. Growth of this asset class is a natural incident to significant improvements in the quality, safety (environmental and physical) and durability of motor vehicles. Increases in the initial cost and long-term value of vehicles have influenced GM and purchasers to seek alternatives to traditional financing. Leasing allows all affected parties to take advantage of much higher projected resale values for newer used vehicles at the time when a prospective purchaser is shopping for a new vehicle. Moreover, GMAC and GM enjoy significant tax benefits which have, at least in recent history, more than offset the financial risks of carrying a growing lease portfolio.

Traditionally, the nature of leasing has made it more difficult to effectively "sell" the rights of a lessor as a financial asset. This is partly attributable to unusual, and very technical, accounting rules developed at a time when "tax shelter" structures dominated the leasing market. Under generally accepted principles of accounting, operating lease assets are particularly difficult to "sell" when the seller seeks to retain recourse and risks/rewards of residual values.

GM and GMAC have sufficient market experience to be comfortable with managing residuals associated with a large automotive lease portfolio. Their market access and proven capacity to liquefy large portfolios of automobiles are unmatched. With the exception of GM's main competitors, no other lessor or group of lessors has similar capacity. It was recognized at an early stage that it would be impractical to consider means to liquefy GMAC's portfolio unless GM or GMAC would retain meaningful residual risk and remarketing responsibility. Thus, the nature of this asset class and goals of GM and GMAC related to those assets have conflicted with historic accounting practice.

In some measure, difficult lease accounting rules represent a logical and expected consequence of the nature of lease assets. Receivables, particularly those which are represented by notes or similar instruments, have long been recognized as readily saleable by endorsement in the ordinary course, even with recourse. The situation of a lessor, however, is quite different in that a lease is traditionally viewed as a bilateral executory contract, comprised of mutual rights <u>and</u> obligations.

Under traditional rules, <u>rights</u> of a lessor to receive lease cash flow are generally recognized as transferrable. <u>Obligations</u>, however, which are presumed to exist in every lease, are not recognized as freely transferrable. Since rights and obligations exist in a single asset, there are natural expectations that the contract cannot be deemed "sold" while integral duties and residual rights are retained. Just as an employee may not bind an employer to accept another

person's performance of his or her work, a lessor was traditionally presumed incapable of merely transferring obligations he or she owed to the lessee, absent lessee consent.

It has, however, long been recognized that legal restrictions on assignability do not reflect the rights of parties under today's standard automotive operating lease agreements. Lessors have no significant obligations, aside from the duty to deliver unrestricted possession of an asset to the lessee. Modern "triple-net" leases are the functional equivalent of assignable financial instruments. In lease transactions outside the field of motor vehicles, legal procedures for separation of lease rights and obligations have proven successful. As a consequence, transfers of rights to lease cash flow, and the asset itself, can generally be achieved for most leased assets despite concern about obligations of lessors. Examples include leveraged lease structures affecting locomotives, airplanes, ships, plants and other property.

For motor vehicles, traditional difficulties with lease assignment are compounded by the interlocking impact of certificate of title laws, the U.S. Bankruptcy Code and laws which impose liability on lessors by virtue of mere asset ownership ("vicarious liability"). To be recognized as the party entitled to benefits of vehicle residual values in the event of bankruptcy, a financial investor or its agent is generally required to be reflected as owner on the certificate of title. If not listed on the title, a lease purchaser faces possible loss of its asset in the event of the seller's bankruptcy. Once named on the title, however, an investor becomes a potential target if the vehicle is involved in an accident.

For many years, titling issues alone proved sufficient to discourage lessors from selling motor vehicle operating leases. To effect a sale, the lessor had to undergo the relatively expensive process of retitling. Absent a financial crisis, the cost of retitling made it cheaper to borrow. When a crisis hit, burdens of mass retitling made sale quite impractical. Obviously, a better solution became necessary in order to make automotive leases freely liquefiable.

Procedures for resolving concerns over "title" ownership appear, finally, headed toward a workable solution. Titling trusts which preclude need for retitling when a financial transfer occurs achieve this goal for several market participants (*e.g.*, World Omni and Ford). Those structures, however, present a number of features that are not desirable from the perspective of potential investors, as described below. These undesirable features, and the enhancements which are used to overcome them, could limit the utility of securitization structures other than COLT at the very time when the sponsoring enterprise has maximum liquidity need.

Investors in lease-backed securities which have been offered by other issuers accept risks that are not generally associated with passive investment in highly rated securities. Attached to this memorandum (Exhibit A) is a copy of the relevant portions of the "RISK FACTORS" section of a recent prospectus for a lease securitization structure used by one of GMAC's competitors. The unique features of COLT are intended to avoid these risks and, in the view of those familiar with the structure, will make it far more attractive for GMAC to securitize leases using COLT than by the use of any other alternative in the market today.

Only COLT provides investors both a perfected lien on each vehicle and lease (to protect holders of debt secured by each such lease and vehicle) and a direct recorded interest in each vehicle title (to protect residual values for equity investors). As a consequence, COLT addresses, and materially reduces (or, in fact, eliminates), each "RISK FACTOR" which other securitization formats must disclose and seek to pass along to investors (or to absorb by accepting less favorable pricing).

THE COLT STRUCTURE – Rights of holders of COLT's debt and equity.

Upon funding with assets permitted by its sale of equity, COLT is expected to become the world's largest independent lessor of motor vehicles. The COLT structure, moreover, appears to be readily expandable. COLT could, in theory, fund most, if not all, the vehicle leases now funded by GMAC. COLT will not buy leases from GMAC. It will only buy new leases originated by dealers and sold directly to COLT. It will, therefore, be available to acquire new leases that GMAC would have acquired, eliminating the need to grow GMAC's lease portfolio and perhaps allowing this asset class to decline for GMAC as existing leases pay down.

As structured, COLT will be the legal, accounting and tax owner of each vehicle and lease that it acquires. GMAC will be allocated tax benefits of COLT under statutorily permitted partnership allocation rules. All leased vehicles will be purchased from independent GM dealers pursuant to agreements that identify COLT as an alternative purchaser to GMAC. COLT's purchases will be funded primarily by borrowing against the security of each lease and vehicle. The balance of the purchase price for each vehicle (3.1%) will be provided by COLT's equity.

Each borrowing to purchase a new lease and vehicle will be evidenced by a separate secured note and will be payable only out of the proceeds of the related lease and vehicle, and credit enhancements which COLT has arranged. COLT's promissory notes will each be in an amount equal to 96.9% of the purchase price of each vehicle. Each purchaser of a secured note (initially GMAC as COLT's floorplan financing source) will be granted a security interest in the vehicle and lease related to such note.

Holders of COLT's secured notes have no "ownership" interest in the related lease or vehicle. Their rights are limited to those of a secured lender. Such rights are superior to those of the owner (COLT) and such rights are subject to all normal restrictions applicable to secured creditors. The lien of each secured noteholder will appear on each related vehicle title, in the same manner as GMAC appears as lienholder on titles for all the retail finance contracts that it purchases.

Under "competing" lease securitization structures, investors are not noted as a lienholder upon each title. The only interest which can be made available to such investors is an undivided interest in a "pool" comprised of many vehicles. Certificate of title laws do not accommodate divisions of vehicle titles so to permit the notation of lien on a "partial" interest in the vehicle.

Secured notes executed by COLT for each lease transaction will be the primary financial assets created by COLT ($202 million of AA/Aa2-rated subordinate equity will support over $6.3 billion of secured notes senior to the equity). Each of COLT's secured notes will be neither cross-collateralized nor cross-defaulted with any other similar note. The equity of COLT in each vehicle provides direct, asset-by-asset credit enhancement for each related secured note. It is perceived that COLT's secured notes (or securities backed by such notes) will be readily ratable at a higher level than COLT's equity.

Unlike other lease structures, investors that fund COLT secured notes will, it appears, have rights that are not impacted by the possibility of future judgment creditors of COLT or by similar liens that would supersede the finance party's priority interest in each related lease and vehicle. Thus, for example, the holder of a COLT secured note should receive rights to the lease and related vehicle which are superior to those of subsequent creditors of COLT. Claims which appear to be subordinate to secured noteholders by the COLT process (but are disclosed as having potentially higher priority under other structures) include vicarious tort liability claimants, judgment liens of normal creditors of COLT, federal and state tax liens and PBGC liens under ERISA.

Appropriately, the holders of COLT's equity are subordinate to the rights of such potential creditors. The COLT structure provides further assurances and potential sources of recovery that have adequately addressed those concerns. Because GM and GMAC have no meaningful equity position in COLT, PBGC liens do not present the significant level of concern that is observed in other structures. Tax provisions adequately cover tax risks and indemnification, backed by insurance, covers vicarious liability issues. Concerns with other potential creditors have been resolved by restrictions on the activities of COLT and by GMAC indemnities (as administrator responsible for maintaining COLT's operations within those limited parameters).

As a consequence of protections implicit in COLT's security structure, COLT's equity far exceeds the amount necessary to fund COLT's operations and to carry on its business. Despite the phenomenal profit recovery of GM and the restructuring of GMAC, equity of COLT is rated higher than debt of GM and GMAC. In normal practice, ratings accorded to COLT's equity are generally reserved for only a few of the most safe and sound issuers. There is, as a practical matter, no doubt that COLT is adequately capitalized and a substantive independent leasing company.

Although the likelihood of a COLT bankruptcy may be practically remote, COLT is not a special-purpose or bankruptcy-remote entity. It is an operating equipment lessor which will be licensed in numerous states. COLT was rated as an operating concern and not as a special-purpose enterprise. Its primary source of financial strength is COLT's portfolio of leases and vehicles. COLT's assets will be dispersed geographically and its cash flows will be readily determinable based on statistically significant empirical and actuarial analyses. These cash flows comprise, far and away, the primary financial support for all COLT securities (debt and equity).

In addition to a diverse portfolio of leases and vehicles, COLT will protect investors from various other risks by arranging for insurance coverage, servicing agreements and designated-purpose reserves. Isolating COLT's assets from operating risks of GM and its affiliates is an important part of the COLT structure. If COLT had been viewed as a substantive affiliate of GM or GMAC, it would not be rated more highly than GM or GMAC, respectively.

Basic terms of COLT's equity, as first described to prospective investors in have been set forth in Exhibit B to this memorandum. To assure compliance with minimum capital rules, final documents provide for equity to be in the form of trust certificates representing undivided ownership interests in COLT. Based on the ability to support debt totalling 96.9% of assets, such equity will be in an amount equal to at least 3.1% of the aggregate value of the assets of COLT (0.1% higher than the 3% disclosed in Exhibit B). A total of 1.0101% of COLT's equity is owned by affiliates of GMAC, and the remainder is owned by four investors: a leasing company affiliate of BankAmerica Corporation and three privately owned investment trusts. The three trusts are structured as leveraged entities which have loan commitments from multi-seller commercial paper conduits associated with Barclays Bank Plc, First Chicago NBD Corporation and Union Bank of Switzerland, respectively.

During the period when COLT is building its initial lease portfolio, equity will be available under subscription agreements with investors. After expiration of the subscription period, equity invested in COLT may be reinvested as lease assets are paid down and repurchased, during the remainder of a three-year revolving period. After the revolving period, the leases will amortize and equity will be repaid, unless the revolving period is extended.

Equity which is amortizing may also be redeemed with proceeds of the sale of new equity. Holders of equity certificates may transfer their interests, but only under limited circumstances which are intended to preclude (among other concerns) inadvertent termination of COLT as a partnership for federal income tax purposes.

Special redemption clauses assure that equity holders will be protected against negative arbitrage risks which may arise upon short-term reinvestment of funds set aside for certificateholders from repayments of outstanding leases. As leases are paid down, 3.1% of the imputed principal represented by such lease payments will be set aside for reinvestment in new leases or, in amortization, to repay certificateholders. Equity which is not invested in leases will be temporarily invested in highly-rated short-term assets which may not produce sufficient interest or other earnings to cover the yield payable on COLT certificates. To preclude risk of nonpayment of mandatory yield, the COLT documents require calculation of forward earnings projections in a manner that assures redemption of uninvested equity before there can be any default in payment of yield.

RESIDUAL AND CREDIT LOSS COVERAGE

Pursuant to a residual value insurance policy and a Termination Value Agreement with National Union Fire Insurance Company of Pittsburgh, Pa. ("NUFI"), COLT has obtained

coverage for credit losses and residual value losses on all vehicles and leases that it will own. NUFI will pay COLT 100% of all loss on each lease asset, subject only to reporting and subrogation rights that are normal for insurance of this type.

The policy provides for overall limits that protect NUFI in the case of a catastrophic general economic collapse. These limits are of no consequence to investors in the debt and equity of COLT by virtue of performance triggers that cause COLT to cease further investments in lease assets long before expected losses would ever approach the maximum coverage amount. As is the case for "variable premium insurance," COLT and NUFI may increase the amount of coverage if necessary to continue to assure full coverage of losses on lease assets.

COLT helps to preserve its ability to continue acquiring lease assets by applying excess recoveries (those which exceed the amount necessary to repay secured notes and return to equity their related investment) in a manner that minimizes draws upon the NUFI policy. This is achieved by applying such receipts first against the credit and residual losses suffered concurrently in respect of other lease assets, then to reinstate residual and credit loss coverage previously utilized by COLT and finally to a reserve to be applied, as necessary, to cover future losses (before funds are sought from the residual value insurer). In the event any such funds remain on deposit in the reserve when COLT terminates its business, those funds are paid, pro rata, to holders of COLT's equity.

COLT's termination value coverage, as provided by NUFI, has been carefully structured to avoid concerns which may arise in cases where residual coverage is limited to a percentage of the original or residual value of leased property. For example, if a lessee guarantees a lessor against residual loss, up to 20% of the value of the leased asset, only such 20% can be relied upon as being payable in respect of each affected leased asset. As a consequence, while 20% may be sufficient to protect the lessor against all meaningful market risk, the lessor is only able to rely upon the lessee to pay 20% of the affected residual. In this circumstance, the balance (which will almost surely be covered by sale of the vehicle) does not represent an obligation of the lessee for financial accounting analyses.

COLT's arrangement with NUFI places no limit on the recovery in respect of each covered lease. NUFI agrees to pay 100% of residual loss on each vehicle in like manner to policies of "variable premium insurance" which are currently used in the lease market. Under variable premium arrangements, a lessor effectively "deposits" an initial premium with the insurer (*e.g.*, 10% of asset value). The insurer covers each insured vehicle against residual loss and charges the premium account based on loss experience. If losses are less than expected, the extra premium may be rolled over to cover new assets, or refunded.

If losses exceed a certain level, premiums increase and a premium notice is sent. If the additional premium is not paid, each currently covered asset remains insured, but there is no coverage for vehicles that fail to fit within the insurance limit based on premium paid. Once that limit is "hit," the policy is effectively cancelled as to future acquired lease assets. Since the

policy is fully effective, however, at the time when each lease comes into effect, later cancellation does not impact the initial classification of a lease under accounting rules.

When placed in the context of COLT's operating documents, variable premium insurance is virtually identical to the coverage which COLT has obtained from NUFI. Provisions in COLT's documents preclude future purchases when losses are perceived as risking anything less than full residual and credit loss insurance by NUFI. These "wind down" events cancel further risk incurrence by COLT and NUFI while credit and residual loss on each lease asset owned by COLT remains 100% insured.

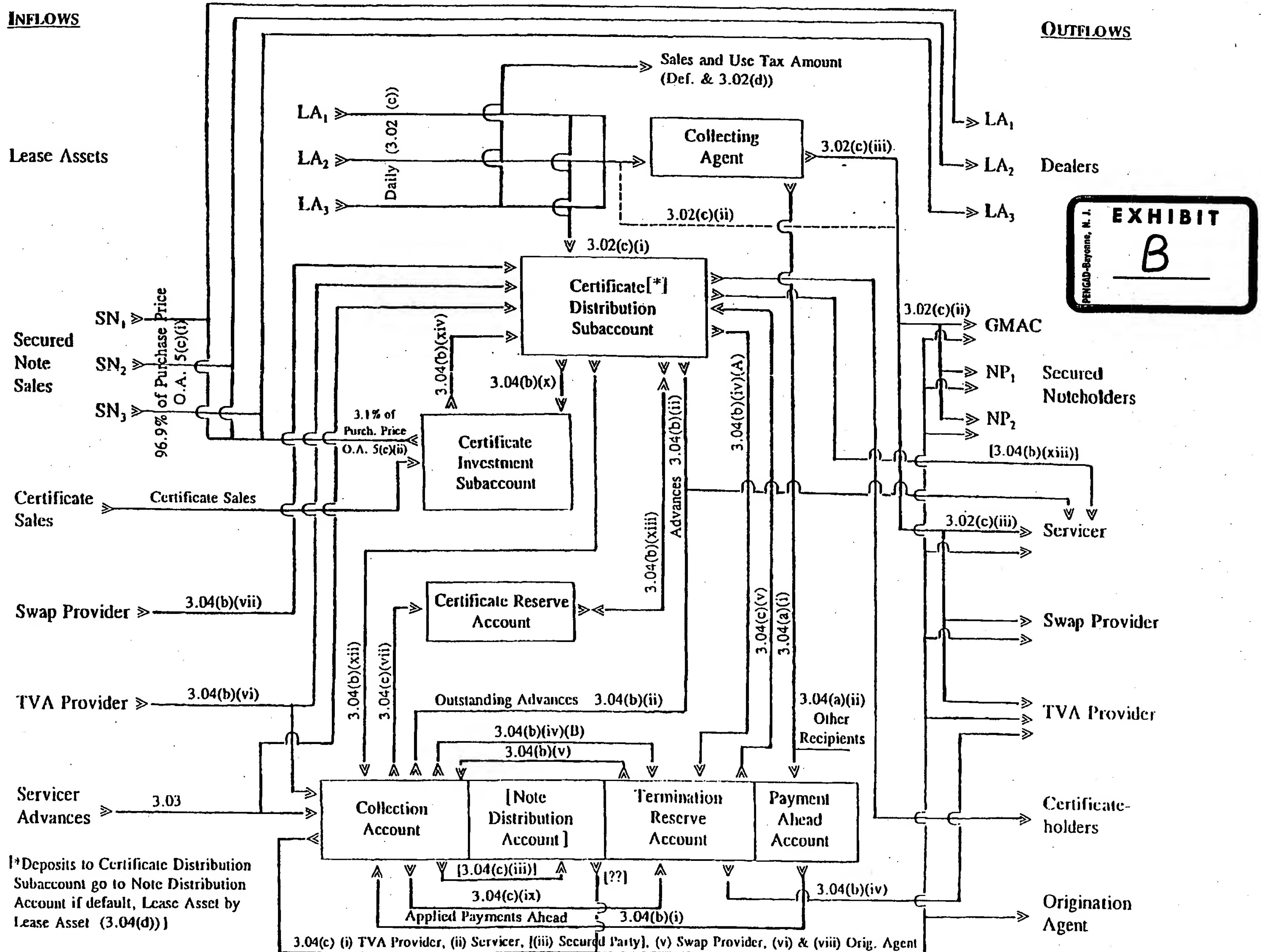
The NUFI coverage cap precludes COLT from creating assets whenever there is less than 100% anticipated residual coverage, protecting NUFI from compounding loss beyond that comprehended by the AA/Aa2 rating standard. COLT thereby avoids potentially adverse consequences associated with limited guarantees that preclude recovery of more than a specific percentage of value from the lessee or insurer.

MANAGEMENT OF COLT – Program and Computer Requirements.

COLT is able to operate as an independent leasing company and incur the risks associated with such operations while maintaining an exceptionally high credit rating by virtue of specially designed programs which continuously monitor all COLT assets, acquisitions and dispositions to achieve maximum risk avoidance consistent with flexible portfolio growth and access to the broadest possible markets. Such care, and its consequence for market access, is essential to the purposes and long-term goals of COLT to fund all or substantially all the new vehicle leases GM's dealers may wish to originate.

To accomplish this, extraordinary computerization procedures and specialized programming were developed for COLT. This programming is near completion. It will need to be fully tested and approved by rating agencies before COLT commences operations.

GMAC has already successfully tested procedures for the origination of vehicle titles in a separate special-purpose nominee trust that will hold the bare legal titles for all vehicles to be owned and leased by COLT and by GMAC. This trust, referred to as "VAULT," has become operational and is now available to "switch" from holding titles to vehicles leased by GMAC so it can provide similar services for COLT in each of several major states.



[*Deposits to Certificate Distribution Subaccount go to Note Distribution Account if default, Lease Asset by Lease Asset (3.04(d))]

REDACTED